

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL No. 965 of 1996****In****SPECIAL CIVIL APPLICATION No. 599 of 1990****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MS.JUSTICE H.N.DEVANI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DEEPAK P. BRAHMBHATT - Appellant(s)**Versus****PRESIDENT - Respondent(s)**

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Appearance :

MR BHARAT T RAO for Appellant

None for Respondent

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**and****HONOURABLE MS.JUSTICE H.N.DEVANI****Date : 10/01/2007**

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. In this Appeal, the judgement delivered by the learned Single Judge in Special Civil Application No.599 of 1990 has been challenged.
2. The facts giving rise to the present Appeal, in a nutshell, are as under :
 - 2.1 The appellant - petitioner was appointed as a Chief Officer of Dehgam Nagar Palika by an order dated 5th June, 1989. Subsequently, his services had been terminated by an order dated 29th January, 1990. The order of termination had been challenged by the appellant - petitioner in the above petition, which is a subject matter of this Appeal. The petition has been rejected and, therefore, the Appeal has been filed.
3. It is not in dispute that necessary qualification for being appointed as a Chief Officer of any Nagar Palika is seven years experience of municipal administration work in Nagar Palikas, as per provisions of Section 47 of the Gujarat Municipalities Act, 1963. The appellant had stated in the application submitted by him for being appointed as a Chief Officer that he had eight years administrative experience. (Even in the petition, in paragraph 2, he has stated that the appellant had worked as Chief Officer in several

Nagar Palikas for a period of eight years.) In view of the afore-stated fact stated in the application made by the appellant, he had been appointed as Chief Officer by Dehgam Nagar Palika. When it was revealed that the appellant was not having requisite experience and he had made incorrect statement in his application, by an order dated 29th January, 1990, the services of the appellant had been terminated. There also appears to be some other reasons for termination, but at this juncture, we are not concerned with the same.

4. The learned Single Judge did not entertain the petition on the ground that the appellant had made an incorrect statement not only in the application which he had submitted for being appointed as Chief Officer, but also in the petition, to the effect that he had worked for eight years as Chief Officer in different Nagar Palikas.
5. The learned Single Judge has given details with regard to the period of administrative experience which the appellant had. It is crystal clear that the appellant was not having requisite experience so as to be appointed as Chief Officer.
6. Even we had called upon the learned advocate appearing for the appellant to give details about the experience so as to know if the appellant had requisite qualification with regard to administrative experience at the time when he had

applied for the post in question. The learned advocate could not give details about seven years experience, and, therefore, the finding of fact to the effect that the appellant had hardly five years experience and he was not eligible to be appointed as a Chief Officer, cannot be disputed.

7. The learned advocate has submitted that the provisions of Section 48 of the Gujarat Municipalities Act had not been followed while terminating the services of the appellant, because, his services could have been terminated only by passing a resolution, passed by two-third majority of the counsellors, but in the instant case, the resolution had been passed by Establishment Committee of the Nagar Palika. The learned Single Judge did not give much importance to the afore-stated submission when made before him, on the ground that the appointment was procured by the appellant by making an incorrect statement and reinstatement of the appellant would amount to perpetuating a wrong committed by him.

8. The learned Single Judge has relied upon the judgement delivered by the Apex Court in the case of Gadde Venkateswara Rao v/s Govt. of Andhra Pradesh & others, AIR 1966 SC 828 to justify his view that a wrong should not be perpetuated. We find that the general body of the Nagar Palika had delegated its powers to take action against the appellant to Establishment Committee and the said

Committee had taken the decision to terminate services of the appellant for the afore-stated reasons.

9. We are also in agreement with the findings arrived at by the learned Single Judge. It is pertinent to note that the service of the appellant had been terminated on 29th January, 1990; the petition filed by him had been rejected on 9th April, 1996; and this Appeal has been notified for admission today i.e. on 10th January 2007. With such a long passage of time, we would not like to interfere with the order impugned in the present Appeal, which is otherwise just and proper. We are of the view that when a petition is filed before this Court under Article 226 of the Constitution of India, the petitioner should have a legally subsisting right and the petitioner must come with clean hands. A person who procured an appointment by making absolutely false statement, not only at the time of getting the appointment, but also in the petition which he had filed before this Court, would not deserve any sympathy, and, therefore, we are also of the view that the learned Single Judge was justified in rejecting the petition.

10. It has also been submitted by the learned advocate that, because another Body had been elected, the service of the appellant had been terminated with some oblique motive. We are not concerned with the said submission for the simple reason that the

first Body which had appointed the appellant as a Chief Officer, had been duped by the appellant, or the said Body had done undue favour to the appellant by ignoring the statutory provisions with regard to the qualifications for being appointed as a Chief Officer. Thus, in our opinion, we do not find any substance in both the submissions made by the learned advocate.

11.The Appeal is, therefore, dismissed.

[ANIL R. DAVE, J.]

[HARSHA DEVANI, J.]

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